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JUL 3 0 2002

OFFICE OF PETITIONS

In re Application of
ROSA et al
Application No. 10/081041
Filed: February 14, 2002
Attorney Docket No.

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:
: DECISION ON PETITION
: AND NOTICE OF
: ABANDONMENT

This is a decision on the Petition filed May 28, 2002, which requests under 37 CFR 1.10 that the application be considered as containing all sheets of drawings on the date filed, which is being treated as a request for clarification of the record under 37 CFR 1.181(no fee).

The petition is granted to the extent indicated.

Any request for reconsideration of this decision must be filed within TWO MONTHS of this mailing. See 37 CFR 1.181(f). Extensions of time are not available under 37 CFR 1.136(a) or (b).

The application was filed February 14, 2002.

However on March 20, 2002 the Office of Initial Patent Examination mailed a Notice of Missing Parts, indicating the application had been accorded a filing date, but was missing essential components. The Notice required inter alia, the filing fee, late completion surcharge, and a properly signed declaration to avoid abandonment. The Notice further indicated the application was informal as it lacked an abstract as required by 37 CFR 1.72(b), and such also had to be submitted to avoid abandonment. The Notice further included an indication that Figures 2-6 described in the specification were missing.

In reply, on May 28, 2002 (bearing an executed certificate of Mailing dated May 17, 2002) applicant filed the instant petition, paid the filing fees owed and a petition

fee, a declaration signed by one (Yablans) of the 3 named inventors, included a copy of the purportedly missing drawings figures, as well as a copy of an itemized postcard receipt with a date stamp of 2/14/02 indicating USPTO receipt of 10 sheets of drawings and asserted that the drawings had been filed with the application papers. Petitioner also noted that joint inventors Rosa and Basdeo "are not cooperating in the prosecution of this application."

Taking the issue addressed in the petition first, the copy of the itemized postcard receipt establishes that 10 sheets of drawings, were among the instant application papers received at the USPTO. Per MPEP 503, as an adequately itemized postcard receipt will serve as *prima facie* evidence of receipt of all items listed thereon, the petition is granted to this limited extent. The Notice erred to this limited extent and that part only of the Notice is **vacated**.

However, inspection of the record fails to reveal that either an Abstract was present on filing, or has been timely submitted in reply to the Notice. Likewise, where, as here, a Notice indicates that a signed oath or declaration is missing, and further, where as here, the oath or declaration does not bear the signatures of all the inventors as required by 37 Cfr 1.63, then a proper reply to the Notice must also include a petition in compliance with 37 CFR 1.47(a). A petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The reply of May 238, 2002 thus also lacks the requisite petition and its aforementioned components. Further guidance as to the requirements of a petition under 37 CFR 1.47(a) may be found in MPEP 409.03(d).

Accordingly this application must be considered as abandoned for failure to prosecute within the meaning of 35 USC §§ 133 and 111(a)(4). Since this application is considered abandoned, all further USPTO proceedings are considered terminated.

Should petitioner wish to submit the missing abstract, petition under 37 Cfr 1.147(a) and its components, a petition under 37 CFR 1.137(and fee) will likewise be required in order to resumed prosecution. The \$130 tendered with respect to the petition under 37 CFR 1.10 will be applied to the fee for a petition under 37 CFR 1.47(a).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
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By FAX: (703) 308-6916
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Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-1820.



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